THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO.17529 of 1997

Dated: 26-07-2006

Between:

Vandara Himansee.

..... PETITIONER

AND

The A.P. State Electricity Board, rep. by its Chairman,
Hyderabad, and two others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION NO.17529 of 1997

ORDER:

The petitioner at the relevant point of time was working as Divisional Engineer/Telecom (DE, for brevity) in the Andhra Pradesh State Electricity Board, now A.P. TRANSCO, (the Board, for brevity). He filed the instant writ petition seeking a writ of Mandamus directing the respondents 1 and 2 to refix his seniority above the third respondent in the category of DE and for a consequential direction to promote him to the post of Superintending Engineer/Telecom (SE, for brevity).

The case of the petitioner is that he was initially appointed as Junior Engineer/Telecom in April, 1966 and was promoted as Assistant Divisional Engineer (ADE, for brevity) on 15-04-1973. He claims to be the senior to the third respondent. He alleged that ignoring his seniority, respondents 1 and 2 promoted the third respondent on 15-01-1990 to the post of DE vide orders in B.P.Ms.No.42. Feeling aggrieved by the same, the petitioner made a representation on 17-01-1990. Subsequently on
22-08-1990, the Board issued B.P.Ms.No.239 promoting the petitioner to the post of DE. The petitioner alleges that representation made by him on 17-01-1990 was not disposed of by the respondents 1 and 2 and he was promoted to the higher category only in due course of time. It is the further case of the petitioner that on 09-01-1995 and 29-05-1996, he again made representations seeking seniority above the third respondent and the same was rejected on 30-08-1996. The petitioner again approached the Board on 18-10-1996 and in the meanwhile when there was a move of the third respondent to the post of SE, he filed the present writ petition.

The Assistant Secretary (Legal Incharge) of the Board has filed a counter-affidavit today. It is stated that in a DPC constituted in January, 1990 to promote qualified and eligible ADEs to the post of DE, the petitioner was placed at serial No.5 in the seniority list of ADEs. The DPC considered the claim of the petitioner on 06-01-1990 and rejected to recommend his name to the promotion on the ground that he was given punishment of Censure in October, 1984, that he was warned for unauthorized absence while he was working at Ramagundam, and that on the whole his work was not satisfactory. The case of the third respondent was considered and he was promoted in January, 1990 itself. However, subsequently another list of eligible ADEs was drawn and the petitioner was promoted as DE on 09-08-1990. The representation made by the petitioner for seniority over and above the

third respondent in the category of DE was considered and was rejected on 30-08-1996. It is also stated that when the case of the third respondent was considered for promotion, the turn of the petitioner did not come up for consideration and therefore, he was not promoted. The petitioner was promoted as SE by B.P.(P&G-Per) Rt.No.112 dated 04-08-1998 and thereafter he retired on 31-08-1998.

The learned counsel for the petitioner submits that though the method of promotion from the category of ADE to DE is by merit-cum-seniority, in case of candidates belonging to scheduled castes, seniority cannot be ignored. He placed strong reliance on the proviso to Regulation 9(A) of the Andhra Pradesh State Electricity Board Service Regulations Part III (hereinafter called, the Regulations). Secondly the learned counsel would urge that the rejection of the claim of the petitioner for promotion as DE based on censure given in 1984 i.e., six years prior to the constitution of DPC, is illegal and arbitrary. The learned standing counsel for the Board refutes these allegations.

The only point that falls for consideration is whether the respondents 1 and 2 were justified in not considering the claim of the petitioner for promotion to the post of DE in January, 1990?

Before considering the point that crops up for consideration, it is necessary to notice that the writ petition in the considered opinion of this Court itself is framed defectively. The petitioner does not specifically challenge the promotion of the third respondent to the post of DE in January, 1990. He only challenges the seniority of the third respondent after seven years of his (petitioner) promotion on 09-08-1990. The prayer made in the writ petition is a direction to the respondents 1 and 2 to fix the petitioner's seniority in the category of DE when the third respondent was promoted as DE in January, 1990 and admittedly the petitioner was promoted as DE in August, 1990. This Court fails to understand as to how the petitioner can be placed over and above the third respondent, especially when the petitioner did not choose to challenge the promotion of third respondent specifically.

The posts of different classes of engineers are included in Branch IV of the Regulations. The posts of DE, SE and Chief Engineer are included in Categories 3, 2 and 1 of Class I respectively, whereas the posts of AEs, ADEs are included in Categories 2 and 1 of Class II respectively. Regulation 9 of the Regulations deals with promotion. Under Regulation 9(A) of the Regulations promotion shall be made on grounds of merit cum seniority in respect of ADEs for promotion as DEs and DEs for promotion as SEs etc.,. Proviso to Regulation 9(A) of the Regulations is to the effect that in the case of members of the services belonging to scheduled castes and scheduled tribes, their claims shall be considered on the basis of seniority subject to fitness. This only means that if an employee in the category of ADE belonging to

scheduled caste is senior to another employee, the seniority of such scheduled caste candidate cannot be ignored, likely he shall have to be considered for promotion provided he is fit to be promoted. This does not in any manner dilute the principal of merit-cum-seniority, which is adumbrated in Regulation 9(A) of the Regulations. Therefore, this Court is not able to accept the submission that by reason of being senior candidate belonging to scheduled caste an employee is automatically entitled for promotion. The proviso to Regulation 9(A) of the Regulations is therefore, of no assistance to the petitioner. Explaining the reason for not considering the claim of the petitioner by DPC constituted in January, 1990, it is stated in the counter-affidavit as under.

> There is no necessity to place anything to para 1 which being formal and so far as the contentions made in para 2 to 3, in reply to para 4, the name of petitioner was at Sl.No.5 in the list of 10 ADEs/Telecom considered for promotion as DE/Telecom by the D.P.C. held on 6-1-90. The D.P.C. took note of the punishment of "Censure" given on 20-10-1984 for his disregard to the instructions of his superiors and a warning given for his unauthorized absence while he was working at Ramagundam. His work as a whole was considered not satisfactory. The basis for promotion to the post of DE/Telecom is merit cum seniority. Hence, the D.P.C. has not recommended his case for promotion as DE/Telecom due to adverse remarks in the A.A.Rs. The recommendations of the D.P.C. were accepted by the Board. He was considered for promotion as DE/Telecom in the subsequent list drawn on 9-8-90 as DE/Telecom. The representation of the petitioner for revision of seniority in the cadre of DE/Telecom was examined in detail and a reply was given to the petitioner rejecting the same in Memo No.DS(P)/DM(P)/401-F(a)2/96, dt:30-08-1996.

Reading the above averments, it is not possible to accept any suggestion that the petitioner was not considered for promotion for the post of DE in January, 1990, only on the ground that censure was given on 20-10-1984. As rightly pointed out by the learned standing counsel there was three reasons for rejection of the claim of the petitioner; first, the censure, second, the warning administrated to him for his unauthorized absence and thirdly, on the whole his work was not considered as satisfactory. This only means that the petitioner was not found fit for being promoted to the post of DE in January, 1990, when admittedly the third respondent was promoted i.e., much prior to the promotion of the petitioner as DE in August, 1990. Therefore, the petitioner is not entitled to claim seniority over the third respondent.

The writ petition, which is devoid of merits, is accordingly dismissed. No costs.

V.V.S.RAO, J

26th July 2006
ghn